



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

October 21, 2008

Ordinance 16281

Proposed No. 2008-0475.3

Sponsors Hague

1 AN ORDINANCE authorizing the King County executive
2 to execute a thirty-year use agreement with the Lake
3 Washington Youth Soccer Association for the use,
4 construction, development, programming, and maintenance
5 of athletic fields and related infrastructure at Sixty Acres
6 park.

7

8 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

9 **SECTION 1. Findings:**

10 A. The Parks Business Plan provides direction for the parks division to work in
11 partnership with organizations to provide new recreational facilities.

12 B. There is an unmet demand for additional soccer fields across King County,
13 and the county has negotiated a partnership with the Lake Washington Youth Soccer
14 Association ("LWYSA") that will help meet this important need.

15 C. The LWYSA represents a membership of almost seven thousand youth
16 playing soccer in the Lake Washington school district.

17 D. The LWYSA will develop and maintain field improvements available at Sixty
18 Acres South and at no cost to King County taxpayers.

19 E. The LWYSA will ensure that these improvements are available and accessible
20 to the public as required by both Forward Thrust and the Washington state Recreation
21 and Conservation Office.

22 F. Historical users of Sixty Acres South including users who fly radio-controlled
23 model planes will continue to have access to the park for both passive and active
24 recreation that may be either drop-in use or formally scheduled use.

25 G. The LWYSA will work with King County and the Seattle Area Soaring
26 Society to establish an agreement that ensures continued opportunities for soaring to take
27 place at Sixty Acres South.

28 H. King County will continue its good-faith effort to assist the Seattle Area
29 Soaring Society to identify a separate, permanent site for soaring in King County, and to
30 research various funding sources to acquire such a site.

31 I. Ordinance 14509 authorizes the department of natural resources and parks to
32 create new public recreational opportunities by empowering user groups, sports
33 associations and community organizations to operate, maintain and program mutually
34 agreed upon capital improvements for public recreation facilities on King County land,
35 and thereby address either or both regional and rural recreation needs without
36 encumbering new tax-funded operations and maintenance costs.

37 J. Allowing the LWYSA to develop certain mutually agreed upon capital
38 improvements, including soccer fields at the site, and allowing LWYSA to provide all

39 maintenance for the soccer facility, will serve to implement the authority provided in
40 Ordinance 14509.

41 K. In accordance with K.C.C. 4.56.150.E, the King County council may adopt an
42 ordinance permitting the county to enter into agreements for the use of county property
43 with bona fide nonprofit organizations if the property is to be used by the nonprofit
44 organization to make improvements to the county property or to provide services that will
45 benefit the public. The agreements are exempt from the requirements of fair market
46 value, appraisal and notice.

47 SECTION 2. The King County executive is hereby authorized to sign a use
48 agreement, substantially the same as that attached to this ordinance, with the LWYSA.

49 SECTION 3. The King County executive's quarterly Parks Omnibus Ordinance
50 Report to the King County council regarding parks division operations shall identify and
51 describe any significant dispute arising between Lake Washington Youth Soccer
52 Association and any other user group or between Lake Washington Youth Soccer
53 Association and the general public, all in regards to 60 Acres park; and the quarterly
54 report shall also identify and describe King County's involvement, if any, in addressing
55 such dispute as contemplated under section 2.9 of Attachment A to this ordinance. To
56 the extent that any significant dispute arises regarding any other use agreements for other
57 King County parks or recreation facilities, the King County executive's quarterly report to
58

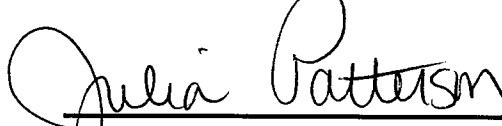
59 the King County council shall also identify and describe such dispute, as well as King
60 County's involvement, if any, in addressing it.

61

Ordinance 16281 was introduced on 8/25/2008 and passed as amended by the Metropolitan King County Council on 10/20/2008, by the following vote:

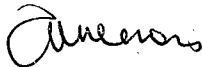
Yes: 8 - Ms. Patterson, Mr. Dunn, Mr. Constantine, Ms. Lambert, Mr. von Reichbauer, Mr. Gossett, Mr. Phillips and Ms. Hague
No: 1 - Mr. Ferguson
Excused: 0

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



Julia Patterson, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 31 day of OCTOBER, 2008.



Ron Sims, County Executive

Attachments

- A. Use Agreement Between King County and Lake Washington Youth Soccer Association for a First-Class Soccer Facility Located at Sixty Acres Park - Revised 10-20-08

RECEIVED
 2008 OCT 31 AM 11:32
 KING COUNTY COUNCIL
 CLERK

USE AGREEMENT BETWEEN
KING COUNTY AND LAKE WASHINGTON YOUTH SOCCER ASSOCIATION
for
A FIRST-CLASS SOCCER FACILITY
located at
SIXTY ACRES PARK

This Use Agreement ("Agreement") is made and entered into by and between the King County Department of Natural Resources and Parks, Parks and Recreation Division (hereinafter "King County") and the Lake Washington Youth Soccer Association, a Washington non-profit corporation (hereinafter "LWYSA") (collectively, the "Parties"), for the development, operation, maintenance, and use of a first-class soccer complex (hereinafter "Soccer Facility") located at Sixty Acres Park in King County, Washington (hereinafter "Site").

RECITALS

- A. King County, a home rule charter county and political subdivision of the State of Washington, is the owner of the Site, located at NE 116th Steet and 154th Place NE Redmond WA 98052, and described and depicted with greater particularity in Exhibits 1.1 and 1.2 to this Agreement.
- B. LWYSA is a not-for-profit Washington corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code. LWYSA is a community-based, open-membership club organized to provide public opportunities for youth soccer, and is a member in good standing with the Washington State Youth Soccer Association (WSYSA).
- C. King County has long identified soccer fields as a regional or rural recreation need in King County, and has determined that soccer fields located at the Site have a significant and unique regional and/or rural public recreation value.
- D. In 1995, King County and LWYSA entered into that certain Concession Agreement (the "Original Agreement") pursuant to which King County granted LWYSA an exclusive thirty (30) year concession to the northern section of the Site (that is, the portion to the north of 116th Street and hereinafter "Sixty Acres North") for the development, operation, maintenance, and use of a large-scale soccer complex.

- E. King County and LWYSA now desire to expand the soccer complex to include the entirety of the Site (that is, both Sixty Acres North as well as the portion to the south of NE 116th Street and hereinafter “Sixty Acres South”), to cancel the Original Agreement and enter into this new Use Agreement, subject to this Agreement being at all times in full force and effect, and to establish a thirty (30) year term for that new agreement.
- F. King County Ordinance 14509 authorized the Department of Natural Resources and Parks to create new public recreation opportunities by empowering user groups, sports associations, and community organizations, like LWYSA, to operate, maintain, and program mutually agreed upon capital improvements for public recreation facilities on King County land, and thereby address regional and/or rural recreation needs without encumbering new tax funded operations and maintenance costs.
- G. Allowing LWYSA to develop certain mutually agreed upon capital improvements, including soccer fields at the Site, and allowing LWYSA to provide all maintenance for the Soccer Facility, will serve to implement the authority provided in Ordinance 14509.
- H. King County will continue to work with the Seattle Area Soaring Society to identify and secure a permanent site for soaring in King County and will continue to research if not identify funding sources for a permanent soaring facility.
- I. King County Code sections 4.56.150.E and -.F authorize the Department of Natural Resources and Parks to enter into use agreements with bonafide nonprofit organizations in order for the nonprofit organization to make improvements to King County property; or for the nonprofit organization to provide services that will benefit the public;
- J. The Site south of NE 116th Street is located within the City of Redmond, which has the authority to issue such clearing, grading, building, and other permits as may be necessary to construct, operate, and maintain the Soccer Facility on the Site;

The Site north of NE 116th Street is located within unincorporated King County, which has the authority to issue such clearing, grading, building, and other permits as may be necessary to construct, operate, and maintain the Soccer Facility on the Site;
- K. Execution of this Agreement is contingent upon completion of the City of Redmond's State Environmental Policy Act (SEPA) review for the Soccer Facility, including any protests and appeals involved in such review, issuance of all City of Redmond permits and authorizations needed to begin construction of the Soccer Facility on the Site, and the County's determination whether there is a need for additional or revised conditions consistent with and based on the City of Redmond's SEPA review.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises described below, the Parties agree as follows:

1. USE AGREEMENT

- 1.1 **Grant**. Pursuant to K.C.C. 4.56.150.E, and subject to the SEPA contingency set forth in *Section 1.9* below, King County hereby authorizes LWYSA to develop, operate, and maintain the Site illustrated in Exhibits 1.1 and 1.2 (that is, both Sixty Acres North and Sixty Acres South, inclusive) as a recreational facility for the benefit and use of the public, subject to the terms and conditions set forth in this Agreement. The County authorizes LWYSA to use the County-owned water rights associated with Sixty Acres North (Surface Water Right Certificate #6900) and Sixty Acres South (Surface Water Right Certificate #6899) to irrigate the Site during the Term, subject to the terms and conditions set forth in this Agreement, including but not limited to *Section 3.2* below, and subject to all applicable laws and regulations.
- 1.2 **Term**. The term of this Agreement is thirty (30) years, beginning on the date that the County notifies LWYSA in writing that the SEPA contingency in *Section 1.9* below has been waived or satisfied, and ending thirty years thereafter.
- 1.3 **User Fees**. LWYSA shall not charge fees to other organizations or individuals for the use of the Site or the Soccer Facility that exceed the amount charged for the use of comparable publicly accessible facilities of like kind and quality. Any differential fees for non-County residents shall be reasonably related to the cost borne by County taxpayers to maintain, improve, or operate the Site or the Soccer Facility for parks and recreation purposes. Otherwise, consistent with RCFB Project Agreement #66-025, LWYSA shall not limit or restrict access to and use of the Site by non-County residents in any way that does not also apply to County residents. User fee increases shall be approved in advance by King County, which approval shall not be unreasonably withheld.
- 1.3.1 LWYSA understands, acknowledges, and agrees that the Site and the Facility may be used for purposes or activities that require removal or relocation of portable equipment including but not limited to soccer goal posts and nets; and LWYSA may impose a separate charge or fee, not to exceed \$100, to recoup its actual labor and fuel expenses to move or replace any such equipment. This \$100 fee cap may be adjusted annually by a percentage equal to the year-over-year change in the federal Bureau of Labor Statistics' published consumer price index for all urban consumers (CPI-U), U.S. City Annual Average, all items, index base period 1982-1984 = 100, without reference to seasonal adjustments. If the Bureau adopts a different base period for this index, then the parties shall use that base period.

- 1.3.2 Not charge any fee for any allowed, unscheduled use of the Facility regardless whether such a use is passive recreation or active recreation.
- 1.3.3 Charge fees for scheduled use of the Facility consistent with and subject to Section 1.3 of this Agreement.
- 1.3.4 LWYSA may charge a reasonable fee for parking at the Facility for special events such as tournaments and jamborees. Otherwise LWYSA shall not charge a fee for incidental use of parking facilities on a day-to-day basis.
- 1.4 **Operating Rules.** Operating rules for the Site shall be consistent with King County ordinances and published policy relating to health and safety. The King County Parks and Recreation rules (King County Use of Facilities – K.C.C. Ch. 7.12 as now codified or hereafter amended) shall apply; provided that in the event of a conflict between this Agreement and those rules, ordinances, or policies, the terms of this Agreement shall control. Nothing contained in this Agreement shall be considered to diminish the governmental or police powers of the County.
 - 1.4.1 **Operating Hours.** Weekdays: Hours of operations shall be from sunrise or 7 AM, whichever is later, to thirty minutes past sunset, during daylight hours. Weekends: Hours of operations shall be from sunrise or 7 AM, whichever is later, to thirty minutes past sunset, during daylight hours with no formal games or competitions beginning before 8 AM.
- 1.5 **Public Benefit.** Both LWYSA and King County understand and acknowledge that King County purchased the Site with funds provided through the Washington State Recreation and Conservation Funding Board (RCFB) and also with proceeds from the sale of King County's Forward Thrust bonds, such that use and development of the Site is subject to certain restrictions and requirements imposed by the RCFB and by King County Resolution 34571. Both Parties further acknowledge and recognize that the use of the Site contemplated in this Agreement is intended to be fully compliant with these restrictions. Neither LWYSA nor King County shall use or deny any use of the Property, nor take any action or fail to take any action, that would cause any violation of the restrictions and requirements imposed by the RCFB (and by extension, King County's commitments in RCFB Agreement #66-025) or by King County Resolution 34571.
- 1.6 **Public Access.** LWYSA understands, acknowledges, and agrees that substantial public access to and use of the Site is a requirement of RCFB and Forward Thrust and therefore was and is a material consideration for King County's execution of this Agreement. Therefore, LWYSA shall make the Site available to the general public for use by any organization or individual for reserved use or scheduled activities, consistent with and pursuant to ***Section 2*** of

this Agreement. Consistent with King County Resolution 34571, LWYSA shall further make the Site available to the general public without charge for use by individuals for informal, unscheduled use, consistent with and pursuant to **Section 2** of this Agreement; provided that such use by the public shall not include any use that is inconsistent with the use of the Site for high quality athletic fields or could result in any damage to the Site other than ordinary wear and tear; and provided further that any such use complies with all applicable laws, ordinances and regulations.

- 1.7 **Open Membership.** LWYSA's youth soccer program shall be open to all persons within its service area on a nondiscriminatory basis consistent with Federal and State law. LWYSA shall assure access to its youth soccer program and to the Site and the Soccer Facility for outdoor park and recreational activities through the use of needs-based rates and programs, which shall be on terms that are consistent with County standards, for all persons residing in LWYSA's service area who desire to participate in the youth soccer program.
- 1.8 **Tax Covenants.** At all times from and after the effective date of this Agreement, LWYSA will:
- (a) Maintain its purposes and engage only in activities which are in furtherance of its purposes and which are permitted by the Washington State Nonprofit Act, RCW 24.03, or as hereafter amended ("the Act");
 - (b) Maintain its status as a nonprofit corporation under the Act and as an organization described in Section 501(c)(3) of the U.S. Internal Revenue Code ("the Code") whose income does not inure to the benefit of any private person;
 - (c) Not encumber, pledge, hypothecate or grant a security interest in all or any part of the Soccer Facility, the Site, or both of them;
 - (d) Not engage in any activities related to the Soccer Facility or the Site which would cause the transaction contemplated under this Agreement to constitute an unrelated trade or business under section 513(a) of the Code; and;
 - (e) Not take any action or omit to take any action which, if taken or omitted, would adversely affect LWYSA's nonprofit status or otherwise cause a tax lien to attach to the Site, the Soccer Facility, or both of them.
- 1.9 **SEPA Contingency.** LWYSA and the County agree that this Agreement shall not go into effect until the County satisfies itself, at its cost and expense in its sole and absolute discretion, that it is appropriate for this Agreement to go into effect with or without additional or revised conditions consistent with and based on State Environmental Policy Act review. The County will remove or waive this contingency when the County determines that this contingency has been satisfied or may be waived based on LWYSA having achieved the following conditions:

- 1.9.1 SEPA review for the Soccer Facility shall have been completed by the City of Redmond, including any administrative appeals associated with such review; and
- 1.9.2 LWYSA shall have received all necessary City of Redmond permits or authorizations needed to begin construction of the Soccer Facility on the Site.

The County agrees to not unreasonably withhold, condition, or delay its approval of the satisfaction of the foregoing conditions.

- 1.10 **Relation to Original Agreement.** The Parties agree that when this Agreement goes into effect, it will supersede and replace the Original Agreement; and, subject to and consistent with *Section 6.7.2* below, the Parties agree that the Original Agreement will be terminated on the date that the County gives LWYSA written notice that this Agreement is going into effect. The Parties further agree that until such time as this Agreement goes into effect, the Original Agreement is and will remain in effect.

2. **OPERATIONS**

- 2.1 **Authorized Uses and Priorities.** The Facility and the Site shall be open for the following uses and in the indicated order of priority:

- First, youth soccer programs, giving preference to the members and players of LWYSA and, as per separate agreement between LWYSA and Northshore Youth Soccer Association (“NYSA”), the members and players of NYSA;
- Second, adult and other soccer programs, giving preference to those having an established use history over new user applicants;
- Third, if LWYSA executes an agreement with Seattle Area Soaring Society (“SASS”) not later than 90 days after the County’s execution of this Agreement, to the members of SASS for their scheduled use of Sixty Acres South for group events;
- Fourth, any other scheduled athletic activity not constituting a “*prohibited use*”;
- Fifth, any other scheduled non-athletic activity not constituting a “*prohibited use*”; and
- Sixth, any unscheduled use (unless constituting a prohibited use) that is not organized or coordinated by any recognized group.

“*Prohibited use*” means any use of the Facility that (i) violates any King County ordinance setting forth rules for use of athletic fields, such as prohibitions on motorized vehicles, horseback riding, and the like; or (ii) is inherently incompatible with the maintenance and care of high-quality, natural

grass soccer fields, such uses to be identified in the Maintenance Plan contemplated in **Section 3.3**, as may be revised from time to time.

LWYSA acknowledges that if LWYSA and SASS are unable to timely execute an agreement regarding SASS' scheduled use of the Facility, then SASS may schedule group use of the Facility on the same basis as, and on an equal footing with, any other non-athletic user group; in effect, under such circumstances SASS' group use will move from what is now third priority to what will then be fourth priority (currently fifth priority) in the list above. LWYSA further acknowledges that in any case SASS' members may make individual unscheduled use of the Facility on the same basis as any other individual users.

2.2 Scheduling Considerations. In scheduling use of the Facility, LWYSA shall:

- 2.2.1 Allow year-round, unscheduled access to the Facility by the general public engaged in “passive recreation” if such use (i) does not otherwise interfere with any scheduled use and (ii) does not impact any area “closed” to all use for maintenance, safety, or other valid reasons;

“Passive recreation” means any activity not expected to appreciably impact high quality natural grass soccer fields. walking, lightly jogging, informally throwing a Frisbee, informally playing catch, informally playing with a soccer ball, flying small kites, flying model aircraft, or engaging in model rocketry, all in small groups, are examples of "passive recreation."

- 2.2.2 Seek to open the Facility for “active recreation” (whether scheduled or unscheduled) by all users at the earliest possible calendar date, subject to and consistent with the specific criteria set forth in the Maintenance Plan, which criteria are intended to preserve the Facility and its first-class soccer fields.

“Active recreation” means any recreational activity that is neither a “prohibited use” or otherwise considered passive recreation. Playing soccer, playing ultimate Frisbee, and playing similar team sports are examples of "active recreation.”

- 2.2.3 Allow “in season,” unscheduled access to the Facility by users engaged in active recreation if such use (i) is not affiliated with any organized sports organization (for which scheduled use and payment of the requisite fee shall always be mandatory); (ii) does not otherwise interfere with any scheduled use; (iii) does not impact any area “closed” to active recreation for rehabilitation; and (iv) does not impact any area “closed” to all use for maintenance, safety, or other valid reasons.

“In season” means the period of time between the date LWYSA “opens” the Facility to active recreation (generally very late Spring) and the date LWYSA “closes” the Facility to active recreation (generally mid-Fall) pursuant to the “Maintenance Plan” contemplated in **Section 3.3**.

- 2.2.4 Schedule use of no more than fifty percent (50%) of the “off peak” “field hours” during any rolling ninety-day period of time.

“Off peak” means daily from the start of the Facility’s Operating Hours until 5:00 pm.

“Field hours” means the total number of available fields (i.e., those not closed for rehabilitation, maintenance, safety, or other valid reasons) multiplied by the number of hours during which time the Facility is open.

- 2.2.5 To the maximum extent feasible, accommodate all users who desire to schedule any permitted use of the Facility during the season for active recreation, resolving all scheduling conflicts between users in the order of priority set forth in **Section 2.2.3** above for scheduling requests made 30 days or more in advance and on a first-come, first-served basis for scheduling requests made less than 30 days in advance. Any field hours not scheduled shall be available for unscheduled use as provided in **Section 2.2.1**.

- 2.2.6 As a first-priority user, not schedule LWYSA’s own programs 30 days or more in advance for more than 50% of the “peak” field hours during the “summer season” and for more than 75% of the “peak” field hours during the fall season; take no more than half of any remaining “peak” field hours during the first 15 days of the first-come, first-served scheduling period; and be free to take any remaining “peak” field hours during the last 15 days of the first-come, first-served scheduling period.

“Peak” means daily from 5:00 pm until the end of Operating Hours for the Facility.

“Summer Season” means the months of June, July, and August;

“Fall Season” means the months of September, October, and November;

- 2.2.7 Seek to close the Facility to “active recreation” (whether scheduled or unscheduled) for all users at the latest possible calendar date, subject to and consistent with the specific criteria set forth in the Maintenance Plan, which criteria are intended to preserve the Facility and its first-class soccer fields.

- 2.2.8 Publicize the Facility scheduling process by posting information about that process in plain view at the Facility, and by enabling scheduling requests to be made via the Internet on LWYSA's home page, the home page for the Facility (anticipated to be www.60Acres.org), and the web pages for the King County Parks and Recreation Division.
- 2.2.9 At such intervals as the parties may agree upon, give the County an updated Facility use schedule.
- 2.3 **Amplification**. LWYSA shall ensure any amplification is employed in accordance with rules set forth for amplification in King County parks.
- 2.4 **Lighting**. Permanent artificial lighting of the Site or the Facility is prohibited, except as may be required by the City of Redmond or King County for purposes of safety at walkways, building exteriors, or parking areas. LWYSA shall not use or allow others to use any artificial lighting to extend recreational use of the Site or the Facility beyond the operating hours set forth in Section 1.4.1.
- 2.5 **Concessions**. Food, souvenir, and product concessions will be contracted for by LWYSA; and concession rights and revenue from concessions shall belong to LWYSA, all subject to and consistent with ***Section 1.8*** of this Agreement.
- 2.6 **Security and Nuisance during Use**. LWYSA shall take reasonable precautions to secure the Soccer Facility, and shall not use the Site or Soccer Facility for any unlawful purpose or use or occupy the Site in any manner that would constitute a public nuisance or otherwise violate federal, state or local laws. LWYSA shall not permit overnight camping in the parking lots or on the fields at 60 Acres South. Camping for up to three nights per year shall be permitted in the parking lots and/or fields at 60 Acres North with LWYSA or another user group securing the required special use permits.
- 2.7 **Advertising**. The grant of the use of the Facility to LWYSA in ***Section 1*** of this Agreement includes the right of LWYSA to advertise, secure sponsorships, and grant naming rights, provided the revenue generated from such is applied to the cost of improving and maintaining the Facility. LWYSA understands that the advertising of tobacco products as defined in King County Ordinance No. 10615 and spirits as defined in King County Ordinance No. 14509 is strictly prohibited. LWYSA further understands that pursuant to Ordinance No. 14509, additional subject-matter restrictions on advertising may be imposed by the Director of the County Parks and Recreations Department ("Director"). If the Director imposes additional restrictions, LWYSA will receive written notification thereof. Therefore, LWYSA expressly covenants that neither it nor any of its sponsors or concessionaires will at any time display, promote or advertise on the Site any tobacco products, spirits or other subject matter expressly prohibited by the Director.

- 2.8 **Signage.** LWYSA shall not erect or install any sign, notice, or other lettering at the Soccer Facility or Site without the prior written approval of King County, which approval shall not be unreasonably withheld. All new Soccer Facility and/or Site signs shall follow the King County Sign System Guide and shall be manufactured and installed by King County, unless LWYSA receives prior written approval of King County to do otherwise. Written approval shall be requested through King County's liaison. If LWYSA violates this provision, King County may remove the sign without any liability and may charge the expense incurred by such removal to the LWYSA. All signs erected or installed pursuant to King County's prior written approval shall also comply with any applicable federal, state or local statutes, ordinances or regulations. LWYSA and King County acknowledge that Recreation and Conservation Funding Board Project Agreement #66-025 requires that the Site and the Soccer Facility be identified as publicly owned and operated for outdoor recreation on all signs, literature, and advertising; that LWYSA be identified as operating the Site and the Facility on behalf of King County; and that signs should also be posted identifying the Site and the Facility as being open to the public.
- 2.8.1 Signage at the Facilities pursuant to subsection 2.2.10 shall include information regarding scheduling processes and opportunities. In addition “permanent” signage at the Facilities should indicate point of contact via LWYSA’s home page and home page for the facility as the opportunity to file concerns regarding scheduling, operations or access to the Park and facilities. In addition, signage should identify a phone number for contact purposes.
- 2.8.2 Signage at the Facilities shall include information regarding contact information for the King County Parks Division, or its successor agency.
- 2.8.3 “Temporary” signage at the facility shall provide as much information as possible regarding temporary or partial closure of fields for maintenance purposes, including availability of other fields. Closure of the fields during winter and spring seasons shall clearly indicate the fields are still available for passive use.
- 2.9 **Incidental Uses.** Subject to and consistent with *Section 1.8* of this Agreement, LWYSA may use the Site and the Soccer Facility to conduct tax-exempt fundraising activities to support the Site, the Soccer Facility, or LWYSA's own beneficial or charitable mission as a not-for-profit Washington corporation; provided, that fundraising activities to support LWYSA will occur during times actually reserved or scheduled by LWYSA within the blocks of time allocated to LWYSA or allocable to LWYSA under *Section 2.2* above, and not during times that are reserved or scheduled by others, and not during times that are otherwise allocated to drop-in use.

- 2.10 **King County's Role in Resolving Issues between LWYSA and User Groups or the General Public.** LWYSA acknowledges that, as the owner of 60 Acres Park, King County is accountable to all of its citizens regarding the uses of and operations at the park, including those uses and operations contemplated under this Agreement. To that end, LWYSA agrees that it will attempt to resolve potential issues between itself and user groups or between itself and the general public as quickly as possible, in conformance with the general intent and specifics of Section 2 of this Agreement. LWYSA also agrees to utilize the Annual Meeting, under Section 5.2 of this Agreement, as an opportunity to identify and resolve issues. However, if a significant dispute arises between LWYSA and one or more user groups or between LWYSA and the general public, King County, as the park owner, retains the right to attempt to resolve such dispute in an expeditious manner. One method available to King County is to utilize the dispute resolution process set forth in Section 7.9 of this Agreement. Another method available to King County is to propose amendments to this Agreement pursuant to and consistent with Section 7.20 of this Agreement. Provided, that nothing in this Section 2.10 shall operate to limit the methods or options available to King County.

3. **MAINTENANCE**

- 3.1 **Scope of Responsibility.** Maintenance for which LWYSA shall have primary responsibility and over which it shall have control include, but are not limited to, aerification, thatching, verticutting, fertilizing, liming, overseeding, topdressing, herbiciding, insecticiding, mowing, and irrigation of the turf; parking area upkeep and organization; upkeep of fencing and gates; upkeep of restroom facilities; and policing of litter on the Site. The cost of maintenance and the utilities serving the Soccer Facility shall be borne solely by LWYSA.
- 3.2 **Maintenance Guidelines.** In maintaining the Soccer Facility, LWYSA shall:
- Schedule maintenance in a manner that maximizes both scheduled and unscheduled use of the Site to the greatest extent practicable;
 - Maintain the fields in a manner that is consistent with the high quality Soccer Facility envisioned for the Site;
 - Keep the Site and Soccer Facility attractive and inviting to the public;
 - Maintain sanitation and sanitary facilities in accordance with applicable State and local public health standards;
 - Keep the Site and the Soccer Facility reasonably safe for public use and, in particular, maintain fire prevention and similar activities at levels reasonable to prevent loss of the lives of users;

- Keep buildings, roads, trails, and other structures and improvements in reasonable repair throughout their estimated lifetime, so as to prevent undue deterioration and not to discourage public use;
- Utilize the County's water rights (allowing withdrawal of water from the Sammamish River for purposes of irrigating the Site) in compliance with King County's Low Flow Water Withdrawal Restrictions as revised from time to time.

LWYSA and King County agree to pursue the use of reclaimed water for irrigation purposes at the soccer fields, in order to replace water withdrawn under King County's water right, once reclaimed water becomes available; provided that LWYSA and King County reach mutual agreement on such issues as water quantity, water quality, conditions of service, availability of backup supplies, fees, charges, and use rates, and infrastructure construction and funding.

3.3 **Maintenance Plan.** LWYSA shall prepare an annual Maintenance Plan, (“the Plan”), for King County’s approval, which approval shall not be unreasonably withheld. The Plan shall:

- Identify target dates for “opening” and “closing” the Facility to “active recreation,” consistent with the goal of opening at the earliest possible calendar date and closing at the latest possible calendar date, recognizing that the capital facility is to be at all times maintained as a first-class natural grass soccer field facility;
- Describe LWYSA’s maintenance standards for the Facility, any planned field closures, and any field rotation schedule;
- Specify the criteria that LWYSA will use to determine whether, on a day-to-day basis, it is necessary to close all or part of the Facility to any type of use;
- Outline the process that LWYSA will use to notify King County if and when LWYSA decides it is necessary to close all or part of the facility to any type of use, other than previously planned closures;
- Enumerate higher impact “uses” of the Facility that could potentially result in unacceptably severe wear and tear on first-class natural grass soccer fields, and set forth the criteria upon which such higher impact uses will be allowed;
- Enumerate any prohibited "uses" of the Facility, other than those uses prohibited under any King County ordinance or regulation;

- Ensure that the Parks and Recreation Division of the King County Department of Natural Resources and Parks does not incur any new aggregate operations and maintenance costs requiring additional public funds (except as may be otherwise provided in this Agreement);
- Establish an irrigation plan, process, or schedule to maximize water use efficiency, including, to the extent practicable, consultation with the managers of irrigated properties that are near the Site and that utilize state-of-the-art conservation water practices.

LWYSA may amend the Plan from time to time during the course of the calendar year, subject to King County's written approval, which approval shall not be unreasonably withheld.

4. **IMPROVEMENTS**

- 4.1 **Scope of Responsibility.** LWYSA shall have primary responsibility and control over making any and all improvements to the Soccer Facility and the Site, including, but not limited to, securing requisite funding, hiring professional consultants, completing designs, obtaining requisite permits and approvals, contracting and overseeing the work, and complying with environmental and other development restrictions. Consistent with RCFB Agreement #66-025, all Site improvements shall be designed to comply with the spirit and intent of the Americans with Disabilities Act. Consistent with King County Resolution 34571, all Site improvements shall be designed to comply with Forward Thrust.
- 4.2 **Project Plan.** LWYSA shall present a “Project Plan” to King County before making any material alteration to the Site or to the Soccer Facility, including any substantial change to the landscaping. Each Project Plan shall describe the planning process with a time line and milestones; describe the principal features of the proposed improvement; provide conceptual design drawings, if applicable; describe in reasonable detail and rationale the goals and objectives of the improvement; identify the party primarily responsible for supervising the project; and provide a schedule showing the sources and timing of funding for the project. Work shall not begin on any particular project without first obtaining the prior written approval of the Project Plan by the Parks and Recreation Division of the King County Department of Natural Resource and Parks, which approval shall not be unreasonably withheld. This right of review and approval is in addition to and separate from any permits or other process that may be required by law.
- 4.3 **No Financial Responsibility.** LWYSA understands, acknowledges, and agrees that King County will be under no obligation directly or indirectly to pay for any labor, material, or improvement associated with the Site or the Soccer Facility. LWYSA will, upon request, inform any inquiring person or entity that King County has no further financial obligations associated with the construction of the Site or the Soccer Facility.

- 4.4 **No Liens.** LWYSA acknowledges and agrees that it has no authority, express or implied, to create or place any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of King County in the fee interest in the Site, or to charge fees for any claim in favor of any person or entity dealing with LWYSA, including those who may furnish materials or perform labor for any construction, operation, repairs, or maintenance. If any such liens are filed, King County may, without waiving its rights and remedies for breach, and without releasing LWYSA from its obligations under this Agreement, require LWYSA to post security in form and amount reasonably satisfactory to King County or to cause such liens to be released by any means King County deems proper, including payment upon satisfaction of the claim giving rise to the lien. LWYSA will pay to King County upon demand any sum paid by King County to remove the liens.
- 4.5 **Contractor Indemnification and Hold Harmless.** LWYSA will require its construction contractors and subcontractors to defend, indemnify and hold King County, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney's fees and costs, arising out of or in connection with the design, development and construction of the Soccer Facility (hereinafter "Design and Construction Phase"), except for injuries and damages caused by the negligence of King County. The indemnification and hold harmless language will be at least as broad as that set forth in *Section 6.7* of this Agreement.
- 4.6 **Contractor Insurance.** LWYSA will require its construction contractors and subcontractors to carry insurance meeting all requirements set forth in **Article 6** of this Agreement. In addition, LWYSA will require its construction contractors and subcontractors to provide, for the duration of construction of the Facility on the Site, Builders Risk insurance covering interests of the County, LWYSA, and the construction contractor in the work, in the amount of the completed value of the Facility with no coinsurance provisions. Such Builders Risk insurance will be on an all-risk policy form and will insure against the perils of fire and extended coverage and physical loss or damage including flood and earthquake, theft, vandalism, malicious mischief, collapse, temporary buildings and debris removal. This Builders Risk insurance covering the work will have a deductible no larger than \$5,000 for each occurrence, which will be the responsibility of the construction contractor. Higher deductibles for flood and earthquake perils may be accepted by the County upon written request by LWYSA and written acceptance by the County. Any increased deductibles accepted by the County will remain the responsibility of the construction contractor. The Builders Risk insurance will be maintained until final acceptance of the work by LWYSA. LWYSA will require its construction contractors and subcontractors to provide copies of insurance certificates or insurance policies to the County upon request.
- 4.7 **Professional Liability Errors and Omissions.** If LWYSA directly or indirectly requires professional services in connection with the design, construction, or improvement of the Facility, then LWYSA will require its

professional service providers to carry insurance meeting all requirements set forth in **Section 6** of this Agreement. In addition, LWYSA will require its professional service providers to carry Professional Liability Errors and Omissions insurance in an amount not less than \$1,000,000 per claim/aggregate. LWYSA will require its professional service providers to give the County copies of all insurance certificates or insurance policies upon request.

- 4.8 **Payment and Performance Bonds.** LWYSA will require its construction contractor(s) to provide payment and performance bonds, each for one hundred percent of the contract price, consistent with RCW Ch. 39.08.
- 4.9 **Licensed Contractors and Professional Service Providers.** LWYSA will use only contractors and professional service providers that are licensed and authorized to do business in Washington State, consistent with RCW 39.06.
- 4.10 **Prevailing Wage.** LWYSA understands, acknowledges, and agrees that construction of the Facility on the Site constitutes a "public work" for purposes of the prevailing wage statute, RCW Ch. 39.12, such that prevailing wages will be paid as required under that statute.

5. **REPORTING**

5.1 **Annual Report.** LWYSA shall furnish the following information to King County on February 1, 2009, and on each February 1st thereafter throughout the Term of this Agreement:

5.1.1 A general summary of the usage of the Site during the calendar year preceding the date of the report.

5.1.2 A general description of the maintenance work performed during the calendar year preceding the date of the report.

5.1.3 A detailed summary and evidence of LWYSA's expenditures made on Capital Improvements during the calendar year preceding the date of the report.

5.1.4 A copy of LWYSA's most recent Form 990 as filed with the Internal Revenue Service.

5.1.5 The Maintenance Plan and field closure or rotation schedule for the twelve months following the date of the report.

5.1.6 An initial schedule for the twelve months following the date of the report, allocating field hours among reserved uses, scheduled use, and drop-in use, all consistent with and pursuant to **Section 2** of this Agreement.

5.1.7 A summary of issues, proposed resolutions to issues and minutes from an annual meeting(s) between LWYSA, affected residential and user group communities and other interested parties.

5.2 **Annual Meeting.** LWYSA and King County, by and through their designated representatives, shall meet at least once per calendar year during the Term of the Agreement to discuss the prior and upcoming years' operations, maintenance, and capital improvements. The annual meeting shall occur during the second week in November, or as soon thereafter as reasonably possible, in connection with LWYSA's submittal of its annual report to King County.

5.3 **Records and Audits.** LWYSA shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. During this Term of this Agreement, LWYSA's books, records and other materials related to any matters covered by this Agreement and not otherwise privileged shall be subject to inspection, review, and/or audit by King County at King County's sole expense. Such books, records and other materials shall be made available for inspection during regular business hours within a reasonable time of the request.

5.4 **Site Inspection.** King County may inspect the Site at any time, with or without notice. LWYSA staff are entitled to be present at that time. King County will take reasonable steps to exercise its right of inspection so as to avoid or minimize disturbance of any activities taking place on the Site. LWYSA will provide King County with a key to any dual-locked structures, gates or storage containers. King County shall not use such keys without prior notice to LWYSA; provided that King County need not provide such notice for inspection or emergency access purposes. The Parties agree for reasons of protection and safety to promptly secure and lock any doors or gates unlocked for activities, use or access. King County has the right to use any and all means that King County deems proper to open doors and gates in an emergency in order to obtain entry to the Site. The parties agree that nothing in this **Section 5.4** shall limit the governmental or police powers of the County. King County and LWYSA further agree that the Washington State Recreation and Conservation Office may inspect the Site at any time, with or without notice.

6. **INSURANCE AND INDEMNIFICATION; ENVIRONMENTAL HAZARDS.**

6.1 **Minimum Scope of Insurance.** At a minimum, LWYSA shall maintain insurance that covers LWYSA's activities and usage of the Soccer Facility and Site as follows:

- 6.1.1 Commercial General Liability insurance (Insurance Services Office form number (CGOO 001)), covering Commercial General Liability with a limit of not less than \$1,000,000 combined single limit per occurrence, \$2,000,000 aggregate.
- 6.1.2 Automobile Liability (Insurance Services Office form number (CA 00 01 Ed. 12 90)) Covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8 & 9 for a limit of not less than \$1,000,000 combined single limit per occurrence.
- 6.1.3 Worker's compensation coverage as required by the Industrial Insurance Act of the State of Washington, statutory limits.
- 6.1.4 King County, its officers, officials, employees and agents shall be covered as additional insureds as respects liability arising out of activities and usage by LWYSA of the Soccer Facility and Site.
- 6.1.5 LWYSA's comprehensive general liability insurance coverage shall be primary insurance as respects King County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees or agents will not contribute with LWYSA's insurance or benefit LWYSA in any way.
- 6.1.6 LWYSA's insurance will apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's policy.

6.1.7 Coverage will not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limits by claims paid, until after forty-five (45) days' prior written notice has been given to LWYSA and King County.

If at any time any of the foregoing policies fail to meet the above minimum standards, then LWYSA will, upon notice to that effect from King County, promptly obtain a new policy, and submit the same to King County with certificates and endorsements, for approvals.

6.2 **Acceptability of Insurers.** Insurance is to be placed with insurers with a Best's rating of no less than A:VIII, or, if not rated by Best's, with a rating in one of the two highest categories maintained by Standard & Poor's Rating Group and Moody's Investor Service.

6.3 **Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by King County. The deductible and/or self-insured retention of the policies will not limit or apply to King County and will be the sole responsibility of LWYSA.

6.4 **Other Insurance Matters.**

6.4.1 At all times from and after the Effective Date of this Agreement, LWYSA agrees to procure and maintain insurance as specified herein, in full force and effect for the duration of the Term of this Agreement, against claims for injuries to persons or property damage which may arise from or in connection with this Agreement.

6.4.2 Each insurance policy will be written on an "occurrence" form.

6.4.3 By requiring such minimum insurance as specified herein, neither party is deemed to, or construed to, have assessed the risks that may be applicable to the other party to this Agreement. LWYSA will assess its own risks and, if it deems appropriate or prudent, or both, maintain greater limits or broader coverage.

6.4.4 Nothing contained in these insurance requirements will be deemed to limit the scope, application, and/or limits of coverage afforded, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy or policies. Nothing contained within this provision will affect or alter the application of any other provision contained within this Agreement.

6.4.5 Each insurance policy required to be carried by LWYSA hereunder will comply with the provision of **Section 6.6** of this Agreement.

6.4.6 LWYSA will furnish King County with certificates of insurance and endorsements as required by this Agreement. The certificates and

endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for LWYSA's insurance are to be on forms approved by King County and are to be received and approved by King County prior to the Effective Date of this Agreement. King County reserves the right to require complete certified copies of all required policies at any time.

6.4.7 Additional insurance requirements applicable to LWYSA's contractors, subcontractors, and professional service providers are set forth in *Section 4* of this Agreement.

6.5 **King County Insurance.** LWYSA acknowledges, agrees, and understands that the County is self-insured for all of its liability exposures, as well as all of its workers' compensation liability exposure. The County agrees, at its own expense, to maintain through its self-insurance program coverage for its liability exposures for the duration of this Agreement, or, in the County's sole discretion, to purchase equivalent insurance coverage through an insurance policy or policies, or through a risk sharing pool. The County agrees to provide LWYSA with at least 30 days prior written notice of any change in the County's self-insured status and will upon request provide LWYSA with a letter of self-insurance as adequate proof of insurance.

6.6 **Waiver of Subrogation.** LWYSA and its insurance carriers will release and waive all rights of subrogation against King County to the extent a loss is covered by property insurance in force. LWYSA hereby releases from liability and waives all right of recovery against King County for any loss from perils insured against or under their respective fire insurance policies, including any extended coverage endorsements thereto; provided, that this provision shall be inapplicable if it would have the effect of invalidating any insurance coverage of LWYSA or King County.

6.7 **Indemnification and Hold Harmless.**

6.7.1 LWYSA shall protect, indemnify, and hold harmless King County, its officers, agents, and employees from and against any and all claims, costs, and/or losses whatsoever occurring or resulting from (i) LWYSA's failure to pay any compensation, wages, benefits, or taxes, and/or (ii) work, services, materials, or supplies to LWYSA employees or other LWYSA suppliers in connection with or support of the performance of this Agreement.

6.7.2 Subsequent to execution of this Use Agreement, King County will defend in good faith any claim, suit, or other proceeding brought or pending as against King County, or LWYSA, alleging or in any manner seeking to declare this Agreement or any part thereof unenforceable, void, unconstitutional or otherwise improper; and King County shall bear its own costs and expenses in doing so. However, King County

shall not pay or be liable to LWYSA for any damage or loss incurred by LWYSA, including but not limited to attorney fees or court costs that may arise from or relate to such claim, suit or other proceeding. Nor shall King County reimburse or pay LWYSA any rental expenses, relocation costs for like or similar facilities, or any other consequential damages in the event that this Use Agreement is temporarily or permanently set aside. King County's obligations under this **Section 6.7.2** shall end upon the expiration or earlier termination of this Agreement.

If, prior to the original expiration date of the Original Agreement, this Agreement is ruled invalid, improper, unlawful, unconstitutional, or is otherwise set aside by final decree of a court of competent jurisdiction, then the Original Agreement shall be automatically restored, effective immediately upon issuance of such decree; and the Original Agreement shall remain in effect for so much of the Original Agreement term as may remain between the date of such decree and the original expiration date of the Original Agreement.

6.7.3 LWYSA expressly agrees to protect, defend, indemnify and hold harmless King County, its elected and appointed officials, officers, employees, and agents from and against liability for any claims (including all demands, suits, and judgments) for damages arising out of injury to persons or damage to property where such injury or damage is caused by, arises out of, or is incident to LWYSA's use of the Site or the Soccer Facility under this Agreement. LWYSA's obligations under this section shall include, but not be limited to:

- The duty to promptly accept tender of defense and provide defense to the King County at LWYSA's expense for claims that fall within this section;
- Indemnification of claims, including those made by LWYSA's own employees and/or agents for this purpose, for claims that fall within this section;
- In the event King County incurs any judgment, award and/or cost arising from claims that fall within this section, including attorney's fees to successfully enforce the section, all such fees, expenses, and costs shall be recoverable from LWYSA.
- LWYSA shall protect, defend, indemnify, and hold harmless King County, its officers, employees and agents from any and all costs, claims, judgments, and/or awards of damages arising out of, or in any way resulting from the performance or non-performance of the obligations under this Agreement by LWYSA's subcontractor(s), its

officers, employees, and/or agents in connection with or in support of this Agreement.

- LWYSA expressly and specifically agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, or agents. For this purpose, LWYSA, hereby expressly and specifically waives, with respect to King County only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW, but only to the extent necessary to indemnify King County.
- In all contracts entered into by LWYSA in conjunction with its duties under this Agreement, LWYSA will include a hold harmless provision similar to this *Section 6.7.3* to protect the County.

6.8 Environmental Hazards.

- 6.8.1 "Hazardous Materials" as used herein shall mean any hazardous, dangerous or toxic wastes, materials, or substances as defined in state or federal statutes or regulations as currently adopted or hereafter amended.
- 6.8.2 LWYSA shall not, without first obtaining King County's written approval, apply, store, deposit, transport, release or dispose of any hazardous substances, petroleum products, sewage, medicinal, bacteriological, or toxic materials, or pollutants, on the Site or the Facility. All approved application, storage, deposit, transportation, release and disposal shall be done safely and in compliance with applicable laws.
- 6.8.3 Nothing in this Agreement shall be deemed to waive any statutory claim for contribution that LWYSA might have against King County under federal or state environmental statutes that arises from hazardous materials deposited or released on the Site by King County. LWYSA may not, however, assert such a claim to the extent that LWYSA creates the need for or exacerbates the cost of remediation upon which a statutory claim for contribution is based as a result of LWYSA using the Site, allowing others to use the Site, changing the configuration of the Site, or changing the use of the Site.
- 6.8.4 If LWYSA discovers the presence of hazardous materials at levels that could give rise to a statutory claim for contribution against King County then LWYSA shall immediately notify King County in writing. Such notice shall in no event be provided more than 10 days after discovery. The parties shall make their best efforts to reach agreement as to which party is responsible for remediation under the terms of this Agreement prior to undertaking any remediation.

- 6.8.5 In no event shall King County be responsible for any costs of remediation that exceed the minimum necessary to satisfy the state or federal agency with jurisdiction over the remediation.

7. **TERMINATION**

- 7.1 **LWYSA Default.** The occurrence of any one or more of the following events shall constitute a default by LWYSA under this Agreement:
- 7.1.1 LWYSA loses or changes its status: (i) as an active Washington not-for-profit corporation; or (ii) as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code as now or hereafter codified; or (iii) as a soccer club affiliated with the Washington State Youth Soccer Association (WYSA), as now or hereafter constituted; provided that King County will not terminate the Agreement under this section if LWYSA cures any and all such loss or change of status within a reasonable time; or
- 7.1.2 LWYSA is in default of the performance of any covenants, conditions, or provisions of this Agreement, where such failure continues for a period of sixty (60) days after written notice is given by King County; provided that if the nature of LWYSA's breach is such that more than sixty (60) days are reasonably required for cure, then LWYSA will not be in default if LWYSA commences to cure within sixty (60) days of King County's notice and thereafter diligently pursues completion and completes performance within a reasonable time; or
- 7.1.3 LWYSA is adjudged bankrupt, makes a general assignment for the benefit of creditors, or takes the benefit of any insolvency act, or if a permanent receiver and trustee in bankruptcy is appointed for LWYSA's estate and such appointment is not vacated within sixty (60) days; or
- 7.1.4 LWYSA violates the provisions of King County's RCFB Project Agreement for the Site, or LWYSA violates §7 of King County Resolution 34571, where such violation continues for a period of one-hundred-eighty (180) days after written notice is given by King County; provided that if the nature of LWYSA's violation is such that more than one-hundred-eighty (180) days are reasonably required for cure, then LWYSA will not be in default if LWYSA commences to cure within one-hundred-eighty (180) days of King County's notice and thereafter diligently pursues completion and completes performance within a reasonable time; or
- 7.1.5 This Agreement is assigned or the Site or the Soccer Facility is used by LWYSA for activities other than in accordance with the terms of this

Agreement, and such default is not cured within thirty (30) days after written notice from King County to LWYSA; or

- 7.1.6 The Site or the Soccer Facility is not open and in operation and available to the public for outdoor park and recreational purposes for a period of sixty (60) consecutive days or more; provided that reasonable periods of closure required for necessary maintenance, turf rehabilitation, capital repair or to remedy threats to health or safety shall not be counted as periods when the Site is not open and in operation.
- 7.2 **King County Default.** King County will not be in default unless King County fails to perform an obligation within sixty (60) days after notice by LWYSA, which notice must specify the alleged breach; provided that if the nature of King County's breach is such that more than sixty (60) days are reasonably required for cure, then King County will not be in default if King County commences to cure within sixty (60) days of LWYSA's notice and thereafter diligently pursues completion and completes performance within a reasonable time:
- 7.3 **Termination for Cause.** This Agreement may be terminated by either party by reason of the default of the other (as set forth in *Sections 7.1* and *7.2*, respectively) by giving notice of termination to the other, which notice shall take effect only upon completion of the dispute resolution procedures set forth in *Section 7.9* below.
- 7.4 **Termination without Cause.** LWYSA may terminate this Agreement with respect to the entirety of the Site or only a portion of the Site (either Sixty Acres North or Sixty Acres South) for any reason whatsoever upon twelve (12) months notice in writing to King County. In this event LWYSA shall not be entitled to any compensation from King County for capital improvements made by LWYSA.
- 7.5 **Compensation.** If this Agreement is terminated for any reason other than (a) termination for cause pursuant to *Section 7.1* and *Section 7.3*, or (b) LWYSA's voluntary termination pursuant to *Section 7.4*, or eminent domain (condemnation) under *Section 7.7*, then LWYSA shall be entitled to reasonable compensation from King County for capital improvements made by LWYSA to the Site with due regard for the funds invested by LWYSA, the fair market value of the Soccer Facility at the time of termination, and the length of time LWYSA has had use of the Soccer Facility.
- 7.6 **Duties upon Termination.** Upon termination of this Agreement, and unless otherwise arranged, LWYSA will remove from the Site and the Soccer Facility all its personal property, goods, and effects. If LWYSA fails to perform this duty at termination, King County may cause such removal to be made and LWYSA's personal property, goods and effects to be stored, the cost and expense to be paid by LWYSA. It is understood and agreed that the real property constituting the Site and the Soccer Facility is the real property of King County and that all

improvements to that real property will continue to belong to King County upon termination of this Agreement.

7.7 **Eminent Domain**. The following rules will govern the rights and duties of the Parties in the event of interference with LWYSA's design, construction, or use of the Site or the Soccer Facility as a result of the exercise of eminent domain or private purchase in lieu thereof:

7.7.1 **Right of Termination**. If the whole of the Site or the Soccer Facility is taken for any public or quasi-public use under any statute or by right of eminent domain, or by private purchase in lieu thereof, then this Agreement will automatically terminate as of the date that title is taken. If more than twenty-five percent (25%) of the Site or the Soccer Facility is so taken and if the taking renders the remainder thereof unusable for the purposes contemplated under this Agreement, then LWYSA and King County will each have the right to terminate this Agreement on thirty (30) days notice to the other, given within ninety (90) days after the date of such taking.

7.7.2 **Non-Termination**. If any part of the Site or the Soccer Facility is so taken and this Agreement is not terminated, then LWYSA may, at its own cost and expense, restore the remaining portion of the Site and the Soccer Facility to the extent necessary to render it reasonably suitable for the purposes contemplated under this Agreement. Alternatively, LWYSA may notify King County that LWYSA is terminating this Agreement without cause under *Section 7.4*.

7.7.3 **Compensation**. The compensation awarded or paid upon a total or partial taking of the Site or the Soccer Facility, or this Agreement, or any of them, will belong to and be apportioned between LWYSA and King County in accordance with their respective interests under this Agreement as determined between them or by a court. Provided, however, that if King County is exercising its right of eminent domain, a fair value will be placed on this Agreement and the Soccer Facility with the compensation thereof awarded solely to LWYSA. Additionally, LWYSA may prosecute any claim directly against the condemning authority for the costs of removal of the goodwill, stock, trade fixtures, furniture and other personal property belonging to LWYSA. King County will have no claim to condemnation proceeds attributable to LWYSA's interest in the Soccer Facility, nor will LWYSA have any interest in King County's condemnation proceeds, if any.

7.8 **Surrender**. Within thirty (30) days of the time this Agreement expires or is terminated, LWYSA shall remove any and all of its portable improvements at the Soccer Facility. If improvements include non-portable fixtures, such improvements shall inure to the benefit of King County and shall remain at the Site or the Soccer Facility.

- 7.9 **Dispute Resolution.** The Parties agree to use their best efforts to resolve disputes regarding this Agreement in an economic and time efficient manner to advance the purposes of this Agreement. In the event that a dispute arises between LWYSA and King County, they shall attempt to resolve such dispute as expeditiously as possible and will cooperate so that the express purposes of this Agreement are not frustrated, and so that any design, planning, construction, or use of the Soccer Facility on the Site is not delayed or interrupted. If the Parties are unable to resolve the dispute between themselves within ninety (90) calendar days from the date the aggrieved party first notified the other party, then the Parties agree that they shall attempt to mediate the dispute with the first available mediator from Washington Arbitration and Mediation Service (WAMS) or Judicial Arbitration and Mediation Service (JAMS) or their successors. The Parties shall each pay one half (LWYSA-50%; King County-50%) of the cost of such mediation. If such mediation shall fail then nothing in this *Section 7.9* shall otherwise limit the Parties' legal, equitable, or other rights or remedies.
- 7.10 **Jurisdiction and Venue.** The exclusive jurisdiction and venue for any disputes arising under this Agreement and not otherwise resolved by the dispute resolution required in *Section 7.9*, including matters of construction, validity, and performance, shall be in the Superior Court for King County in Seattle, Washington.
- 7.11 **Right to Participate in Litigation.** LWYSA shall have the right to participate in any litigation, arbitration, or dispute directly affecting the Site, the Soccer Facility, or LWYSA's interest therein, including, without limitation, any suit, action, arbitration proceeding, condemnation proceeding or insurance claim. King County, upon instituting or receiving notice of any such litigation, arbitration or dispute will promptly notify LWYSA of the same.
- 7.12 **Recording.** This Agreement, and any memorandum thereof requested by either party, shall be made capable of being recorded with the King County Recorder's Office.
- 7.13 **Liaisons and Notices.** LWYSA and King County shall each identify to the other a particular person who shall serve as its designated liaison for purposes of communicating about day-to-day matters involving the Soccer Facility and the Site. Beyond this, any written notice that is required or permitted regarding this Agreement shall be given by U.S. first class mail or by personal delivery to the party which is the intended recipient of the notice at its address as follows:

If to LWSYA:

Lake Washington Youth Soccer Association
Attention: President
12525 Willows Road NE, Suite 100
Kirkland, Washington 98034-8796

Designated Liaison: Curt Bateman, Operations Director
Email: curtb@lwysa.org
Telephone: 425-821-1741
Facsimile: 425-820-0702

If to King County:

King County Department of Natural Resources and Parks
Attention: Division Director, Parks and Recreation Division
201 South Jackson Street, Suite 700
Seattle, Washington 98104-3855

Designated Liaison: John Villapudua, Contracts Administrator
Email: john.villapudua@kingcounty.gov
Telephone: 206-263-6209

A change in address or designated liaison of a party for purposes of receiving notices may be changed by that party by giving notice of such change as provided herein.

- 7.14 **Headings**. The headings in this Agreement are for convenience only and shall not be deemed to expand, limit, or otherwise affect the substantive terms of this Agreement.
- 7.15 **Neutral Authorship**. Each party has been represented by counsel in connection with the negotiation, execution and delivery of this Agreement and its Attachments. Each of the provisions of this Agreement has been reviewed and negotiated, and represents the combined work product of both parties hereto. No presumption or other rules of construction which would interpret the provisions of this Agreement in favor of or against the party preparing the same will apply in connection with the construction or interpretation of any of the provisions of this Agreement or its Attachments.
- 7.16 **Governing Law**. The laws of the State of Washington shall govern the interpretation and enforcement of this Agreement.
- 7.17 **Attorney Fees**. In the event of litigation between the parties to enforce their rights under this Agreement, the prevailing party shall be awarded its reasonable attorney fees and costs, including any reasonable fees and costs that may be incurred on appeal.

- 7.18 **Severability**. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable unless striking such provision materially alters the intention of the Parties. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provisions it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 7.19 **Non-Waiver**. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right subsequently to enforce and compel strict compliance with every provision of this Agreement.
- 7.20 **Amendments**. The Parties may, by mutual agreement, modify or amend any provision of this Agreement at any time during the Term. Such amendments shall be made in writing and signed by both parties. Provided, that if the Parties agree on any modification, revision, or amendment to Sections 1 through 5 of this Agreement, prior to finalizing the change, the King County Executive shall submit a letter to all King County Councilmembers identifying the proposed change. The Councilmember will have 15 days to respond, beginning upon receipt of the Executive's notification letter. If any Councilmember has a concern, then that Councilmember must submit a letter to both the King County Executive and LWYSA within the 15-day notification period, requesting the Executive to submit the proposed change to the Council for approval by ordinance. If the Executive receives no letters from any Councilmembers requesting the proposed change be submitted to the Council for approval by ordinance, then the Executive and LWYSA may finalize the proposed change after the 15-day notification period ends. Without limiting the generality of the foregoing, the Parties acknowledge that any amendments to this Agreement regarding the Operating Hours in Section 1.4.1 must be approved by the King County Council.
- 7.21 **Entire Agreement**. This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

Dated as of this ____ day of _____, _____:

KING COUNTY:

**LAKE WASHINGTON YOUTH
SOCCER ASSOCIATION**

(Signature)

(Signature)

Ron Sims

(Printed Name)

Joel Hussey

(Printed Name)

King County Executive

(Title)

President

(Title)

Approved as to form:

OFFICE OF THE KING COUNTY
PROSECUTING ATTORNEY

ACKNOWLEDGEMENTS AND NOTARY BLOCKS FOLLOW ON NEXT PAGE

STATE OF WASHINGTON)
)SS
COUNTY OF KING)

On this _____ day of _____, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared, to me known to be the individual described in and who executed the forgoing instrument, and acknowledged to me that _____ signed and sealed the said instrument as _____ free and voluntary act and deed for the uses and purposed therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Notary Public in and for the State of Washington, residing

at _____
City and State
My appointment expires _____

STATE OF WASHINGTON)
)SS
COUNTY OF KING)

On this _____ day of _____, 2008, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn personally appeared, to me known to be the individual described in and who executed the forgoing instrument, and acknowledged to me that _____ signed and sealed the said instrument as _____ free and voluntary act and deed for the uses and purposed therein mentioned.

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Notary Public in and for the State of Washington, residing

at _____
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My appointment expires _____

Exhibit 1.1

Exhibit 1.1



Exhibit 1.2

